Saraswathy Devi a/p Nadchatiram v Vijayalakshmi Devi a/p Nadchatiram

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-251 OF 1996
NH CHAN, ABDUL MALEK AHMAD AND DENIS ONG JJCA
10 NOVEMBER 1997

Civil Procedure *— Originating summons — Procedure by — Originating summons did not contain any details of questions on which court's determination or direction was sought or sufficient particulars so as to show cause of action in respect of which relief or remedy was sought — Whether merely asking court for an injunction against law firm from acting in proceedings under Legal Profession Act 1976 or its Rules sufficient — Whether cause of action disclosed — Whether originating summons ought to have been dismissed — Rules of the High Court 1980 O 7 r 3(1)*

Legal Profession *— Practice of law — Practice and etiquette — Professional etiquette — Whether solicitors could be restrained from acting for party — Whether a solicitor and client relationship is a personal relationship — Whether relationship between solicitor and client was something which is more than that of a professional one — Whether a solicitor is prohibited from acting for his client merely because he is related by blood to his client — Legal Profession (Practice and Etiquette) Rules 1978 r 3*

Legal Profession *— Practice of law — Practice and etiquette — Professional etiquette — Pecuniary interest — Solicitor entitled to a share in land from arrangement of family company which became involved in civil suits — Whether solicitor should be restrained from acting for the family company — Whether financial benefits received by solicitor directly in connection with the suits — Legal Profession (Practice and Etiquette) Rules 1978 r 27(a)*

The respondent brought an action by originating summons against the appellant and her law firm praying for an order enjoining the appellant and her law firm from acting for her brother Jegadevan in Case Nos 24-346-1992, 22-61-1993, 02-175-1994, 02-260-1994 and 02-483-1995; her sister Suseela Devi in Case Nos 22-95-1993 and 22-54-1995; her niece Shanti in Case No S2-22-562-1993; and any of the brothers and sisters of the appellant in any proceedings relating to the estate of Nadchatiram and of Nadchatiram Realties (1960) Sdn Bhd where the respondent was a party to the proceedings, on the grounds that: (i) the appellant was related by blood to the parties that she was representing; and (ii) the appellant had direct pecuniary interest in the case based on an arrangement made in 1990 between the shareholders of Nadchatiram Realties (1960) Sdn Bhd where a reference was made about the appellant's entitlement to a quarter share of a piece of land. However, the heading of the originating summons only referred to five cases, namely: (i) Civil Suit Nos 24-346-1992 and 22-61-1993 (between the respondent and Jegadevan); (ii) Civil Suit Nos 22-95-1993 and 22-54-1995 (between Nadchatiram Realties (1960) Sdn Bhd and Suseela Devi); and (iii) Civil Suit No S2-22-562-1993 (between Shanti and the respondent). The judge below granted all the orders sought against

the appellant thus preventing her and her firm from acting in all matters referred to in the order. The appellant appealed. A

Held, allowing the appeal:

(1) The matters for which the orders were sought which were not referred to in the heading of the originating summons did not appear to have any connection with the cases referred to in the heading and should have been ignored by the judge in the court below. As for Civil Suit No 22–54–1995, the respondent was not even a party to the suit so that she had no locus standi to ask for any order against the appellant in that suit (see p 95B–C). B C

(2) The originating summons contravened O 7 r 3(1) of the Rules of the High Court 1980 because it did not contain any details of the questions on which the respondent was seeking the court's determination or direction nor did it contain sufficient particulars so as to show what her cause of action was in respect of which she was asking relief or remedy. Merely asking the court for an injunction against the appellant and her firm from acting in the civil suits under the Legal Profession Act 1976 or under its Rules was not enough. The originating summons must show why she or her firm should not act in the proceedings. Since this was not shown, no cause of action was disclosed in the originating summons against the appellant. On this ground alone, the originating summons ought to have been dismissed (see p 95G–I). D E

(3) It is not the business of the courts to interfere with the wishes of litigants to legal representation by practitioners of their choice. A solicitor and client relationship is not a personal relationship. However, there would be a personal relationship between them if their association is something which is more than that of a professional one. There was nothing to suggest that the relationship between the appellant and her clients was anything but a professional one which was that of a solicitor and client relationship. There is no personal (meaning individual; private; one's own) relationship between the appellant and her kin which was outside that of a professional relationship of solicitor and client. Rule 3 of the Legal Profession (Practice and Etiquette) Rules 1978 does not prohibit a solicitor from acting for his client merely because he is related by blood to his client. For the prohibition to apply, the relationship must be that of a personal one, meaning an individual or a private relationship which is beyond that of a solicitor and client relationship (see pp 96G and 97A–C). F G H

(4) The arrangement made in 1990 regarding the appellant's entitlement to land could not have any bearing as direct monetary reward or payment to the appellant in those suits. There was nothing to suggest that the appellant had received those alleged financial benefits way back in 1990 in contemplation of those I

suits. For the prohibition in r 27(a) of the Legal Profession (Practice and Etiquette) Rules 1978 to apply, it must be shown that the financial benefits of the transaction were received by the appellant directly in connection with the suits (see pp 97I and 98A–B).

Per curiam:

The proper course for the respondent was to make her applications about the appellant under their respective individual actions so that the relevancy of the application could be perceived immediately. By doing what she did in this case, the respondent had, by lassoing in other matters, confused and, in actual fact, also misled the judge below into making the type of orders which he would not have made if he had been fully apprised of the situation (see p 95D–E).

[Bahasa Malaysia summary

Penentang memulakan tindakan melalui saman pemula terhadap perayu dan firma undang-undangnya yang memohon perintah bagi menghalang perayu dan firma undang-undang daripada bertindak untuk abangnya Jegadevan dalam Kes-Kes No 24–346–1992, 22–61–1993, 02–175–1994, 02–260–1994 dan 02–483–1995; kakaknya Suseela Devi dalam Kes-Kes No 22–95–1993 dan 22–54–1995; anak saudara perempuannya Shanti dalam Kes No S2–22–562–1993; dan mana-mana adik-beradik perayu dalam apa-apa prosiding yang berhubung dengan harta pusaka Nadchatiram dan Nadchatiram Realties (1960) Sdn Bhd di mana penentang merupakan suatu pihak prosiding, atas alasan bahawa: (i) perayu adalah saudara pihak-pihak yang diwakilinya; dan (ii) perayu mempunyai kepentingan kewangan yang langsung dalam kes berdasarkan suatu persetujuan yang dibuat pada tahun 1990 di antara pemegang saham Nadchatiram Realties (1960) Sdn Bhd di mana suatu rujukan telah dibuat mengenai hak perayu kepada sesuku bahagian sebidang tanah. Namun demikian, tajuk saman pemula hanya merujuk kepada lima kes, iaitu: (i) Guaman Sivil No 24–346–1992 dan 22–61–1993 (di antara penentang dan Jegadevan); (ii) Guaman Sivil No 22–95–1993 dan 22–54–1995 (di antara Nadchatiram Realties (1960) Sdn Bhd dan Suseela Devi); dan (iii) Guaman Sivil No S2–22–562–1993 (di antara Shanti dan penentang). Hakim di bawah membenarkan kesemua perintah yang dipohon terhadap perayu justeru itu menghalang beliau dan firmanya daripada bertindak dalam semua perkara yang dirujuk dalam perintah itu. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan:

(1) Perkara-perkatra yang mana perintah dipohon yang tidak dirujuk dalam tajuk saman pemula nampaknya tidak mempunyai sebarang kaitan dengan kes-kes yang dirujuk dalam tajuk dan sepatutnya telah diabaikan oleh hakim di mahkamah bawah. Berkaitan dengan Guaman Sivil No 22–54–1995, penentang tidak pun merupakan

pihak kepada guaman bagi memberikannya locus standi untuk meminta sebarang perintah terhadap perayu dalam guaman itu (lihat ms 95B–C). A

(2) Saman pemula melanggar A 7 k 3(1) Kaedah-Kaedah Mahkamah Tinggi 1980 kerana ia tidak mengandungi sebarang butir tentang soalan atas mana penentang meminta penentuan atau arahan mahkamah dan tidak juga mengandungi butir-butir bagi menunjukkan apakah kausa tindakannya yang mana relief atau remedi dipohon. Sekadar meminta injunksi daripada mahkamah terhadap perayu dan firma beliau daripada bertindak dalam guaman sivil di bawah Akta Profesyen Undang-Undang 1976 atau di bawah Kaedahnya tidak mencukupi. Saman pemula mesti menunjukkan mengapa beliau atau firma beliau tidak patut bertindak dalam prosiding. Oleh kerana ini tidak ditunjukkan, tiada kausa tindakan telah didedahkan dalam saman pemula terhadap perayu. Atas alasan ini sahaja, saman pemula sepatutnya telah ditolak (lihat ms 95G–I). B C D

(3) Bukanlah urusan mahkamah-mahkamah untuk mengganggu keinginan litigan kepada perwakilan undang-undang oleh peguam pilihan mereka. Hubungan di antara peguamcara dan klien bukanlah hubungan peribadi. Walau bagaimanapun, terdapat hubungan peribadi di antara mereka sekiranya hubungan adalah sesuatu yang lebih daripada hubungan profesional. Tiada apa-apa untuk mencadangkan bahawa hubungan di antara perayu dan kliennya bukan sekadar hubungan profesional tetapi adalah hubungan di antara peguamcara dan klien. Tiada hubungan peribadi (bermakna individu; persendirian; kepunyaan seseorang) di antara perayu dan saudaranya yang berada di luar hubungan profesional peguamcara dan klien. Kaedah 3 Kaedah-Kaedah (Amalan dan Etika) Profesyen Undang-Undang 1978 tidak melarang seorang peguamcara daripada bertindak untuk kliennya semata-mata kerana dia adalah saudara klien. Untuk larangan itu terpakai, hubungan mestilah merupakan hubungan peribadi, yang bermakna suatu hubungan individu atau persendirian yang melebihi hubungan peguamcara dan klien (lihat ms 96G dan 97A–C). E F G

(4) Susunan yang dibuat pada tahun 1990 mengenai hak perayu ke atas tanah tidak mempunyai apa-apa pengaruh sebagai ganjaran wang atau bayaran terus kepada perayu dalam guaman-guaman tersebut. Tiada apa-apa untuk mencadangkan bahawa perayu telah menerima manfaat kewangan yang dikatakan itu pada tahun 1990 dalam jangkaan guaman-guaman tersebut. Untuk larangan dalam k 27(a) Kaedah-Kaedah (Amalan dan Etika) Profesyen Undang-Undang 1978 terpakai, ia mesti ditunjukkan bahawa manfaat kewangan transaksi telah diterima oleh perayu secara langsung berkaitan dengan guaman-guaman tersebut (lihat ms 97I dan 98A–B). H I

Per curiam:

Cara yang betul untuk penentang adalah untuk membuat permohonannya tentang perayu di bawah tindakan individu masing-masing supaya kerelevanan permohonan boleh dikesan dengan segera. Dengan perbuatannya dalam kes ini, penentang telah mengelirukan dan pada hakikatnya telah mengelabui hakim di bawah dengan melibatkan perkara-perkara lain supaya membuat jenis perintah yang tidak akan dibuat andainya keadaan telah dimaklumkan sepenuhnya kepada beliau (lihat ms 95D–E).]

Notes

For cases on practice and etiquette, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1501–1508.

For cases on originating summons, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2334–2351.

Legislation referred to

Legal Profession Act 1976
Legal Profession (Practice and Etiquette) Rules 1978 r 3
Rules of the High Court 1980 O 5 r 1, O 6 r 2(1)(a), O 7 r 3(1)

Appeal from: Originating Summons No 24–465 of 1995 (High Court, Seremban)

Appellant in person.

Cecil Abraham, *Satharuban Sivasubramaniam* and *CW Lam* (*Satha & Co*) for the respondent.

Hj Sulaiman Abdullah for Bar Council as amicus curiae.

Cur Adv Vult

NH Chan JCA (delivering the judgment of the court): The plaintiff Vijayalakshmi, who is the respondent in this appeal, has brought this action by originating summons against her sister Saraswathy. It is necessary to reproduce the heading of the originating summons as it is important to be aware of the matters referred to in the summons. It is as follows:

DALAM MAHKAMAH TINGGI MALAYA, SEREMBAN
DI DALAM NEGERI SEMBILAN DARUL KHUSUS

SAMAN PEMULA NO 24–465–1995

Dalam Perkara Akta Profesion Undang-Undang 1976

Dan

Dalam Perkara Kaedah Profesion Undang-Undang (Amalan dan Etiket) 1978

Dan

Dalam Perkara Mahkamah Tinggi Seremban Saman Pemula No *24–346–1992*, Mahkamah Tinggi Seremban Guaman Sivil No *22–61–1993*, Mahkamah Tinggi Seremban Guaman Sivil No *22–95–1993* dan Mahkamah Tinggi Seremban Guaman Sivil No *22–54–1995* (Emphasis added.)

Dan

Dalam Perkara Mahkamah Tinggi Kuala Lumpur (Bahagian Sivil) Guaman Sivil No *S2–22–562–1993* (Emphasis added.)

ANTARA

VIJAYALAKSHMI DEVI a/p NADCHATIRAM ... PLAINTIF

DAN

SARASWATHY DEVI a/p NADCHATIRAM (Beramal Undang-undang di bawah nama dan gaya Tetuan N Saraswathy Devi) ... DEFENDAN

In this originating summons, Vijayalakshmi applies for an order enjoining Saraswathy (who is an advocate and solicitor) and her law firm from acting for:

(1) Jegadevan in Case Nos *24–346–1992* and *22–61–1993*, 02–175–1994, 02–260–1994 and 02–483–1995;

(2) Suseela Devi in Case Nos *22–95–1993* and *22–54–1995*;

(3) Shanti d/o Thiruchelvasegaram in Case No *S2–22–562–1993*; and

(4) any of the brothers and sisters of the defendant in any proceedings relating to the estate of Nadchatiram and of Nadchatiram Realties (1960) Sdn Bhd (in liquidation) where Vijayalakshmi is a party to the proceedings. (Emphasis added.)

The judge below granted all the orders sought against Saraswathy thus preventing her and her firm from acting in all the matters referred to in the order. Hence this appeal.

Of all the five cases referred to in the heading of the originating summons, it is only in these five cases do the orders applied for have reference to them. They are:

(a) in the matter of Seremban High Court Civil Suit Nos 24–346–1992 and 22–61–1993 where Vijayalakshmi is the plaintiff and Jegadevan is the defendant;

(b) in the matter of Seremban High Court Civil Suit Nos 22–95–1993, where Vijayalakshmi is the plaintiff, and 22–54–1995, where Nadchatiram Realties (1960) Sdn Bhd is the plaintiff and Suseela Devi is the defendant in both cases; and

(c) in the matter of Kuala Lumpur High Court Civil Suit No S2–22–562–1993 where Shanti d/o Thiruchelvasegaram is the plaintiff and Vijayalakshmi and her husband are the defendants.

As for the other matters for which the orders are sought, they do not appear to have any connection with the cases referred to in the heading and should have been ignored by the judge in the court below. Therefore, Vijayalakshmi by her originating summons may only seek to prevent Saraswathy from acting in the five cases, namely Case Nos 24–346–1992, 22–61–1993, 22–95–1993, 22–54–1995 and S2–22–562–1993, which appear in both the heading and the orders which are claimed. But, can she do that? As for Seremban High Court Civil Suit No 22–54–1995, Vijayalakshmi is not even a party to the suit so that she has no locus standi to ask for any order against Saraswathy in that suit.

We wish to take the opportunity here in this case to express our disapproval over the manner in which Jayalakshmi has brought this originating summons. The proper course is to make her applications about Saraswathy under their respective individual actions so that the relevancy of the application can be perceived immediately. By doing what she did in this case, Vijayalakshmi had, by lassoing in other matters, confused and, in actual fact, also misled the judge below into making the type of orders which he would not have made if he had been fully apprised of the situation.

What then is Viiayalakshmi's cause of action against Saraswathy in the remaining four cases? She wants to have Saraswathy disqualified from acting for her brother Jegadevan in Seremban High Court Civil Suits Nos 24–346–1992 and 22–61–1993, her sister Suseela Devi in Seremban High Court Civil Suit No 22–95–1993 and Shanti Thiruchelvasegaram in her suit (Kuala Lumpur High Court Civil Suit No S2–22–562–93) against Viiayalakshmi.

Order 7 r 3 of the Rules of the High Court 1980 ('the RHC') provides that every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

The instant originating summons does not contain any details of the questions on which Vijayalakshmi is seeking the court's determination or direction nor does it contain sufficient particulars so as to show what her cause of action is in respect of which she is asking relief or remedy. Merely asking the court for an injunction against Saraswathy and her firm from acting in the four remaining civil suits under the Legal Profession Act 1976 or under its Rules is not enough. The originating summons must show why she or her firm should not act in the proceedings. Since this is not shown, no cause of action is disclosed in the originating summons against Saraswathy. On this ground alone, the originating summons ought to have been dismissed.

Order 5 r 1 of the RHC states that 'civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition'.

Order 6 r 2(1)(a) of the RHC states:

> 2 (1) Before a writ is issued it must be indorsed —
> (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby; ... .

Order 7 r 3(1) of the RHC states:

> 3 (1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

So that an originating summons is just like a pleading in a statement of claim, it must contain a concise statement of the relief or remedy claimed with sufficient particulars to identify the cause of action in respect of which the relief or remedy is claimed. In other words, an originating summons, like a statement of claim, must disclose a cause of action. Therefore, if the summons itself, as in the instant case, does not disclose any cause of action, it can be dismissed.

In any case, a look at the affidavit evidence filed in support of the originating summons shows that the complaint of Vijayalakshmi against Saraswathy acting in the cases is twofold:

(1) That Saraswathy is related by blood to the parties that she is representing. Jegadevan is her brother, Suseela Devi is her sister and Shanti is her niece. It has been said that a lawyer who acts for himself has a fool for a client. In the same vein, it can be said that a lawyer who acts for a relative or a close friend may have his vision so clouded that he could not see the wood for the trees. Adages apart, we do not think that it is the business of the courts to interfere with the wishes of litigants to legal representation by practitioners of their choice.

Rule 3 of the Legal Profession (Practice and Etiquette) Rules 1978 ('The Practice and Etiquette Rules') reads:

> 3 (a) An advocate and solicitors shall not accept a brief if he is or would be embarrassed.
> (b) An embarrassment arises —
> (i) ...
> (ii) where there is some *personal* relationship between him and a party or a witness in the proceedings. (Emphasis added.)

A personal relationship between a solicitor and his client can only mean a relationship (meaning an association) which is personal between them. A working relationship between partners of a firm is

not a personal relationship, so that a lawyer can always act for his firm. A sexual relationship between two people is a personal relationship. But a solicitor and client relationship is not a personal relationship. However, there would be a personal relationship between them if their association is something which is more than that of a professional one. There is nothing to suggest that the relationship between Saraswathy and her clients is anything but a professional one which is that of a solicitor and client relationship. There is no personal (meaning individual; private; one's own) relationship between Saraswathy and her kin which is outside that of a professional relationship of solicitor and client. Rule 3 of the Practice and Etiquette Rules does not prohibit a solicitor from acting for his client merely because he is related by blood to his client. For the prohibition to apply, the relationship must be that of a personal one, meaning an individual or a private relationship which is beyond that of a solicitor and client relationship.

and

(2) That Saraswathy has a direct pecuniary interest in the cases. This is what the judge said:

...

(a) pecuniary interest

In both Case Nos 24–346–1992 and 22–95–1993, Jegadevan and Suseela Devi rely on an alleged agreement entered into sometime in 1990 (exh NVD 14). They also rely on a letter dated 12 December 1985 written by their mother, the late Rajapakiam (exh NVD 12). The documents relied on by the litigants and are disputed confer on the defendant ¼ share in the land held under CT No 16120 Lot 2551 in the Mukim of Rasah, approximately 50 acres in area valued at RM9m and this is in addition to the 10 acres the defendant purchased from Dr Mahadevan.

Rule 27(a) of the Practice and Etiquette Rules 1978 absolutely prohibits an advocate and solicitor from appearing in any matter where he or she is directly pecuniarily interested.

The complaint under this head can only apply to these two cases, that is to say, Vijayalakshmi wants Saraswathy to be disqualified from acting for her brother, Jegadevan in Seremban High Court Civil Suit No 24–346–1992 and her sister, Suseela Devi in Seremban High Court Civil Suit No 22–95–1993 on the ground that Saraswathy has a direct pecuniary interest in these two cases.

Rule 27(a) of the Practice and Etiquette Rules 1978 reads:

27 (a) An advocate and solicitor shall not appear in any matter in which he is *directly* pecuniarily interested (Emphasis added.)

We are unable to see how an arrangement made in 1990 between the shareholders of the family company Nadchatiram Realties (1960) Sdn Bhd where a reference was made about Saraswathy's entitlement

to a quarter share of a piece of land and a statement by her late mother made in December 1985, neither of which were made in contemplation of these two suits which were filed by Vijayalakshmi against Jegadevan in 1992 and Suseela Devi in 1993, can have any bearing as direct monetary reward or payment to Saraswathy in those suits. There is nothing here to suggest that Saraswathy had received those alleged financial benefits way back in 1990 in contemplation of these two suits. For the prohibition in r 27(a) of the Practice and Etiquette Rules 1978 to apply, it must be shown that the financial benefits of the transaction were received by Saraswathy directly in connection with the two suits.

We, therefore, allow the appeal with the result that the originating summons is dismissed.

Costs to the appellant here and in the court below.

Appeal allowed.

Reported by Jafisah Jaafar